IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 9144 of 2005(L)

I.A.918/04 & 919/04 IN OS.127/2000 of MUNSIFF'S COURT,THODUPUZHA

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PETITIONER:

BABY THOMAS, S/O. THOMAS,
AGED 58 YEARS, PURAVAKKATTU HOUSE,
OTTALLOOR P.O., MUTTAM VILLAGE,
THODUPUZHA.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
THE LAW SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. FRANCIS S/O. PUNNOOSE,
MANAPPURATHU HOUSE, OTTALLOOR P.O., MUTTOM,
THODUPUZHA.

3. MATHEW S/O. FRENCHU MANAPPURATHU HOUSE,
OTTALLOOR P.O., MUTTOM, THODUPUZHA.

4. PHILIP JOHN, S/O. JOHN,
MANAPPURATHU HOUSE, OTTALLOOR P.O., MUTTOM,
THODUPUZHA.

5. C.J.JOSEPH, S/O. JOSEPH,
CHAMAKKALAYIL HOUSE, OTTALLOOR P.O.,
MUTTOM VILLAGE, THODUPUZHA.

R2 TO R5 BY ADV. SRI.P.C.HARIDAS
R1 BY GOVT.PLEADER SRI.SHYSON P.MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.9144/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PETITION TO SET ASIDE EX PARTE ORDER DT.9.6.04.

EXT.P2 – TRUE COPY OF DELAY CONDONATION PETITION DT. DO.

EXT.P3 – TRUE COPY OF THE OBJECTION FILED BY RESPONDENT TO EXT.P1 DT.28.6.04.

EXT.P4 – TRUE COPY OF OBJECTION FILED TO EXT.P2 DATED DO.

EXT.P5 – TRUE COPY OF ORDER IN I.A.918 & 919/04 DT.12.7.04.

PIUS C. KURIAKOSE, J.

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W.P.(C)No.9144 OF 2005

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

Ext.P5 common order passed by the learned Munsiff on the applications filed by the 2nd defendant in a suit for injunction, to set aside the ex parte decree passed against him and for condoning the delay of 581 days caused in the matter, is under challenge in this proceeding under Article 227 initiated by the 2nd defendant.

2. Heard Sri.S.P.Chaly, counsel for the petitioner and Sri.P.C.Haridas, counsel for respondents 2 to 5.

3. Even though there was stiff resistance to the submissions of Sri.Chaly, which were on the basis of the grounds raised, by Sri.Haridas, I find that the suit is pending since the same is being contested by the fellow-defendants. Considering that fact, I am of the view that the learned Munsiff should have allowed the applications filed by the petitioner. But since the delay caused in the matter has not been explained in a completely satisfactory manner, I am inclined to allow the applications only on terms.

Accordingly the Writ Petition will stand disposed of issuing the following directions:-

Ext.P5 order is set aside and I.A.Nos.918 and 919 of

2004 are allowed on condition that the petitioner pays to the plaintiffs-respondents 2 to 5 either directly or through their counsel in this Court, a sum of Rs.1000/- by way of costs within three weeks from today and also pays a further amount of Rs.500/- as costs to the High Court Legal Services Committee within the same time-limit. If payments are made as above, Ext.P5 will stand set aside and the I.As. will stand allowed. If payments are not made, Ext.P5 order will stand confirmed and the Writ Petition will stand dismissed. There is yet another condition that the petitioner shall file written statement within one month from today.

(PIUS C.KURIAKOSE, JUDGE)

tgl